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Judge: Whitman L Holt
Chapter: 12
Location: Telephonic
Hearing Date: March 2, 2023
Hearing Time: 11:00 a.m.
Response Date: February 23, 2023

4 Attorneys for L&M Recreation LLC
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 In re
11 HOODSTOCK RANCH, LLC,
12 Debtor.

Case No. 22-00797-WLH12

OBJECTION TO DEBTOR'S MOTION FOR
EXTENDING DEADLINE TO FILE
CHAPTER 12 PLAN

14 Creditor, L&M Recreation, LLC ("L&M" or "Creditor"), by and through its
15 undersigned counsel of record, hereby objects to Debtor's Notice of Motion for Extending
16 Deadline to File Chapter 12 Plan [Doc 30] ("Notice"). In support of its objection, L&M states as
17 follows:

18 1. This case was commenced on August 29, 2022 by the filing of a voluntary
19 petition for non-individuals under Chapter 12 of the United States Bankruptcy Code. The 341
20 Meeting of Creditors was held on October 13, 2022. The Chapter 12 Plan was due by November
21 28, 2022.

22 2. The Debtor testified, through its representatives Mary Kathleen and Mark
23 Heron, at the 341 Meeting of Creditors that it was working on a proposed plan and that it would
24 be filed within two weeks from that date.

1 3. The Valuation Hearing that was scheduled for December 1, 2022 was
2 stricken at the request of Debtor's counsel; the Confirmation Hearing was originally scheduled
3 for January 10, 2023. *See* [Doc 6, 15].

4 4. The day after Creditor filed its Motion for Relief from Stay [Doc 16],
5 Debtor filed a Chapter 12 Plan of Reorganization dated December 23, 2022 [Doc 19] (the
6 "Plan"). Debtor did not request leave from the Court for filing its plan after the deadline prior to
7 filing the Plan. The Court subsequently requested that the Debtor file a motion to extend the
8 deadline for filing the Plan. However, rather than filing said motion, the Debtor improperly
9 combined its motion with its response to Creditor's Motion for Relief from Stay [Doc 26]. The
10 Court again requested that Debtor file a motion to extend the deadline and set the matter for a
11 hearing before the Court.

12 5. The Debtor then filed the Notice on February 2, 2023, which Notice did
13 not include a motion to extend the deadline or any other supporting documents. The Court
14 should strike Debtor's Notice as improper because it is not accompanied by a motion or any
15 supporting documents.

16 6. 11 U.S.C. § 1221 states that "The debtor shall file a plan not later than 90
17 days after the order for relief under this chapter, except that the court may extend such period if
18 the need for an extension is attributable to circumstances for which the debtor should not justly
19 be held accountable." As one court has noted, the standard under § 1221 is more "stringent" than
20 the general "for good cause" standard. *Davis v. United States Bank NA (In re Davis)*, No. CC-
21 16-1390-KuLTA, 2017 Bankr. LEXIS 2169, *6 (B.A.P. 9th Cir. Aug. 2, 2017). The standard
22 requires that the court "find that the delay necessitating the extension was caused by
23 "circumstances beyond the debtor's control." *Id.*, citing *First Sec. Bank & Trust Co. v. Vegt*, 511
24 B.R. 567, 585 (N.D. Iowa 2014). The *In re Davis* court went on to quote the following passage
25 from Collier on Bankruptcy:

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1 [T]he 90-day limitation was probably included in chapter 12 for
2 the benefit of creditors rather than for the benefit of the debtor.
3 Because chapter 12 lacks the safeguards for creditors that are
4 provided in chapter 11, the 90-day limitation . . . is [one of] the
5 primary protection[s] for creditors against a debtor's languishing in
chapter 12 without confirming a plan. Thus, it is appropriate that
the debtor should be required to meet a stringent burden if the
debtor seeks an extension of the 90-day period.

6 *Id.*, *6-7, citing 8 Collier on Bankruptcy ¶ 1221.01[2] (Alan N. Resnick & Henry J. Sommer,
7 eds., 16th ed. 2017) (edits original).

8 7. If the Court considers Debtor's improperly filed motion to extend the
9 deadline, the motion is woefully inadequate under § 1221. The motion, supported by the
10 declaration of Debtor's counsel, merely states in conclusory fashion that Debtor's counsel missed
11 the filing deadline. First, counsel's assertions seem implausible. Only after Creditor filed its
12 Motion for Relief from Stay and raised the issue of the Plan not being filed, did Debtor file its
13 Plan. At more than 30 pages, with multiple supporting exhibits, including a liquidation analysis,
14 it is clear that the Plan had been completed prior to when it was filed (indeed, it was obviously
15 completed prior to Creditor filing its Motion for Relief from Stay). Neither Debtor nor its
16 counsel offers any justification for why the Plan was only filed as a response to Creditor's
17 Motion for Relief from Stay.

18 8. Second, the purported factual basis, even if true, fails to show how the
19 Debtor should not be justly held accountable. There is no declaration or affidavit from Debtor in
20 support of the motion to extend the deadline. Further, Debtor attended the 341 Meeting and was
21 aware that not only was the Plan due shortly, but that it would be filed within two weeks. In
22 short, Debtor's motion to extend the deadline and counsel's supporting declaration fall far short
23 of the stringent requirements under 11 U.S.C. § 1221.

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1 WHEREFORE, L&M respectfully requests that the Court deny Debtor's Notice.
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DATED: February 23, 2023.

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TOMASI BRAGAR DUBAY

By: /s/ Eleanor A. DuBay
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Of Attorneys for L&M Recreation, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2023, I served the foregoing **OBJECTION**

3 TO DEBTOR'S MOTION FOR EXTENDING DEADLINE TO FILE CHAPTER 12

4 **PLAN** on the following individuals by electronic notification via CM/ECF as follows:

Sean Currie Glinka: sglinka@portlaw.com
Nicholas Henderson: nhenderson@portlaw.com
Ford Elsaesser: ford@eaidaho.com
United States Trustee: USTPRegion18.SP.ECF@usdoj.gov
Thomas W. Stilley: tstilley@sussmanshank.com
Garrett S. Eggen: geggen@sussmanshank.com

Dated: February 23, 2023.

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By: /s/ Eleanor A. DuBay

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